

1510611 (Migration) [2016] AATA 4477 (8 September 2016)

**DECISION RECORD**

|                           |                                                                                                     |
|---------------------------|-----------------------------------------------------------------------------------------------------|
| <b>DIVISION:</b>          | Migration & Refugee Division                                                                        |
| <b>APPLICANT:</b>         | Mrs Thi Thao Trang Tran                                                                             |
| <b>CASE NUMBER:</b>       | 1510611                                                                                             |
| <b>DIBP REFERENCE(S):</b> | CLF2014/29658                                                                                       |
| <b>MEMBER:</b>            | Hugh Sanderson                                                                                      |
| <b>DATE:</b>              | 8 September 2016                                                                                    |
| <b>PLACE OF DECISION:</b> | Sydney                                                                                              |
| <b>DECISION:</b>          | The tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa. |

Statement made on 08 September 2016 at 1:54pm

## STATEMENT OF DECISION AND REASONS

### APPLICATION FOR REVIEW

1. This is an application for review of a decision of a delegate of the Minister for Immigration on 29 July 2015 to refuse to grant the applicant a Partner (Temporary) (Class UK) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant applied for the visa on 26 February 2014 on the basis of her relationship with her sponsor. At that time, Class UK contained only one subclass: Subclass 820 (Partner (Temporary)). The criteria for the grant of this visa are set out in Part 820 of Schedule 2 to the Migration Regulations 1994 (the Regulations).
3. The delegate refused to grant the visa on the basis that the visa applicant did not satisfy cl.820.211(2)(a) and cl.820.221 because the delegate was not satisfied that the applicant was the spouse, as defined in s.5F of the Act, of the sponsoring partner.

### BACKGROUND

4. The applicant is a citizen of Vietnam and is currently 23 years old. She first entered Australia on 8 July 2012 holding a Student visa.
5. The sponsor of the applicant is Dat Thuy Vang. He was born in Vietnam and is currently 43 years old. He is an Australian citizen. He was previously married and divorced his wife on 24 May 2012. There were no children of that relationship.
6. The parties claim that they first met each other soon after the applicant arrived in Australia at a party held by her uncle to which the sponsor was invited as a friend. The applicant moved to Canberra on 15 July 2012 to study for a Bachelor of Information Technology at the University of Canberra. The sponsor remained living in Sydney where he worked on a casual basis as a nail technician.
7. The parties claimed that they continued to keep in touch with each other over the telephone and would visit each other on weekends when the applicant travelled to Sydney to visit her uncle and other family members. In September 2012 when the applicant was attending a birthday party for her cousin the sponsor expressed his love for her. On 26 November 2012 the applicant agreed to accept his love and move their relationship a further step. The sponsor travelled to Vietnam in June 2013 and claimed to have visited the family of the applicant there. On 8 August 2013 the sponsor proposed marriage to the applicant and she agreed. The parties were married on 26 October 2013 with the applicant's father travelling from Vietnam to attend the wedding.
8. Various documents were provided to the department in support of the application. This included the following:
  - Photos of the parties together with family members;
  - Telephone records;
  - Joint bank account;
  - Enrolment information from the University of Canberra; and
  - Financial information as to the sponsor's employment.
9. The delegate who considered the application noted the following:

- The joint bank account indicated the sponsor's income was deposited into this account and almost all the withdrawals were made in Sydney;
- There was no information that the parties were sharing their expenses or pooling their resources;
- The applicant said that her education expenses were met by her family, while the sponsor claimed that he was assisting her;
- The parties have never lived together throughout the time of their claimed relationship;
- Although the applicant claimed she was not able to transfer her studies to Sydney, there was no evidence to support this;
- There was no evidence to support the claim the sponsor had made attempts to find employment in Canberra;
- Although there was evidence of the applicant travelling from Canberra to Sydney on weekends, she had previously been doing this to visit her uncle and other family members in Sydney and there was no information which would indicate that she was doing this to spend time with the sponsor;
- Despite claiming in February 2014 that they would "hopefully, in the very near future, either one of us will transfer to either State to living under the same roof together" neither party had taken any action to do so at the time of the department's decision;
- The sponsor was living in share accommodation in Sydney which would not have been appropriate for the sponsor;
- The parties provided evidence of attending a Buddhist Temple and making donations to that temple, however, there was little other information should indicate the parties represented themselves as being in a genuine married relationship; and
- Despite having known each other for over three years, there did not appear to be any attempt by the parties to have established a joint household together or live together in the same city.

10. Based on these considerations, the delegate was not satisfied that the parties were in a genuine and continuing relationship. Accordingly, the delegate found that the applicant did not meet the criteria in cl.820.211(2)(a) or any of the alternative criteria and the application was refused.

#### ***INFORMATION TO THE TRIBUNAL***

11. The applicant appeared before the tribunal on 19 August 2016 to give evidence and present arguments. The tribunal also received oral evidence from the sponsor. The tribunal hearing was conducted with the assistance of an interpreter in the Vietnamese and English languages. The applicant was represented in relation to the review by her registered migration agent who attended the hearing.

#### ***EVIDENCE OF THE APPLICANT***

12. The applicant said that she had been living since May 2015 with the sponsor in his home in Birrong. She said that she had been working for about 11 months at a nail shop in Revesby but this ended before she and the sponsor travelled to Vietnam. She said that she was planning to go back to work at a different nail shop in Revesby next week.

13. The applicant said that she stopped her studies in Canberra because she failed in her last term. She said that she stopped any study in February 2015. She said that she did not come to Sydney to live with her husband at that time as the sponsor had travelled to Vietnam to visit his grandfather. She acknowledged that the sponsor returned to Australia on 16 March 2015. She said that she still did not come down to Sydney after that because they needed to have preparations. She said that these included ending her study. The tribunal indicated that this was not plausible. The applicant claimed that she was looking for a job in Canberra and that if she got a job and that job was better than the sponsor's then he would come and live in Canberra.
14. The applicant said that the sponsor had been living in the same granny flat in Birrong where they are now living while she was living in Canberra. She said that he was living by himself. She said that he was now working in Penrith as a nail technician, six days a week with Tuesdays off. She said that he had previously worked as a nail technician in a shop in Wollongong.
15. The applicant said that she had a bank account in her sole name as well as the joint bank account. She said that she does not currently use her sole bank account. She said that the sponsor has an account in his sole name which she uses to save money. She said that it had a balance of about \$3,000. She said that the sponsor is paid in cash.
16. The applicant said that she has obtained a job as a nail technician. She said that she plans to go back to study when they are more settled, after they have children.
17. The applicant said that they did not have many social activities. She said that they will go and visit her aunt occasionally. She said that when she and the sponsor travelled to Vietnam in 2016 it was made to spend time with her family. They also spent some time with the sponsor's relatives.
18. The applicant said that she first met the sponsor in July 2012 after she arrived in Australia. She said that they kept in touch after she moved to Canberra and they met each other again in person in August or September. The tribunal noted the applicant travelled to Vietnam from 26 July 2012 and did not return to Australia until 31 August 2012. This would mean that it would be impossible for the parties to have met in person in August. The applicant claimed that they did keep in touch by telephone and it must have been September that they saw each other again.
19. The applicant said that she would travel to Sydney occasionally to stay with the sponsor and he would travel occasionally to Canberra. She said that this would only be overnight. She said that she did not travel to Sydney in Christmas 2014 as she was studying. She said the applicant was also working apart from Christmas day, Boxing Day and New Year's Day so there was no time to visit. She said that they would visit each other every one or two months.
20. The applicant said that she was Buddhist, but did not practice any religion. She said that she did not go to the temple much. She said that it was a long time since she attended the Temple, she could not remember when it was, she only went by herself. She said that the sponsor had no religion but had a Catholic background. She said that he does not go to church. When asked, she specifically stated that he did not go to church for Christmas 2015 or Easter 2016 when they claim to have been living together. She said that he did not go to church at other times.
21. The applicant said the sponsor's parents live in Canley Heights. She said that his parents did not like overseas students from Vietnam and did not like her. She said that the sponsor does not keep in touch with his parents much and does not know how often he sees them. She said he doesn't tell her. She said that he sometimes contacts his siblings every one or

two months but they also do not like recently arrived Vietnamese. She said that his brother lives in Perth and his sisters live in Canley Heights, one of them with his parents. She said that the sponsor had said that he believed that once they have a child they will then accept the relationship.

22. The applicant said that she did not know much information about the sponsor's former wife. She was aware that he sponsored her for a Partner visa and that his family did not like her.
23. The applicant said that she contacts her parents every one or two weeks. She said that she normally calls them when the sponsor is at work. She said that the sponsor only speaks to them every one or two months. She could not remember the last time he spoke to them.
24. The applicant said that she and the sponsor do grocery shopping on Tuesdays at Bankstown going to Asian shops. She said that she does most of the cooking and the sponsor helps with the cleaning.
25. The applicant said that the parties had been trying to have a child. She said that she saw a doctor a few months before they went to Vietnam. She said that the sponsor knew she was going to see a doctor about this issue but that he did not want to go with her. She said the doctor said that he could not find any reason she could not fall pregnant and they should just let nature take its course.
26. The applicant said that she and the sponsor plan to have two children and then find a place to rent, probably a unit. She said that after she has children she would return to study.

#### ***EVIDENCE OF THE SPONSOR***

27. The sponsor said that he lived in Yagoona and had been living there for four years. Prior to the applicant moving in with him in May 2015 he had been living there by himself. He said that the applicant was working at Revesby for about a year as a nail technician prior to their travel to Vietnam. She has a job back in Revesby as a nail technician which she will be starting in a week.
28. The sponsor provided details of his travel to Vietnam both with the applicant and by himself and the contact he had with her parents.
29. The sponsor said that the applicant stopped her study in Canberra in April or May 2015. He said that she did not come and live with him immediately as they needed some time to prepare the move. He said that the applicant had to arrange to send her clothes to Sydney. The sponsor said that the applicant had never worked in Canberra and had never looked for work in Canberra. He said that she had only ever looked for work in Sydney.
30. The sponsor provided details of his work and the applicant's work in Sydney. He provided consistent information as to various aspects of their household, including who did most of the cooking, shopping they did and the arrangements they had made for their bank account.
31. The sponsor said that the applicant is Buddhist and regularly goes to the temple. He said that he also goes to the temple with her and went with her last week after they returned from Vietnam.
32. The sponsor said that he is a Baptist. He said that he tries to go to church when he is not working on a Sunday. He said that he and the applicant attended church together for Easter 2016 which was a big ceremony and that they both went to church together for Christmas 2015.

33. The sponsor said that his parents live in Canley Heights. He said that he visits them every one or two weeks. He said that they were not happy with his relationship with the applicant because they believe that she only wants him to sponsor her for the visa and she will not be faithful. He said that he visits his sisters in Sydney and also speaks to his brother in Perth. He said that the applicant has not met them and they did not approve of the relationship. He said that he needed time to explain it to them and that if they have a child the relationship may be accepted.
34. The sponsor said that he speaks to the applicant's family every one or two weeks. He said that he will always say hello to them when the applicant has telephoned them.
35. The sponsor said that he and the applicant are thinking of having two children. He said that the applicant had seen a doctor prior to their travelling to Vietnam but that the doctor had not found that there was any reason the applicant could not conceive a child.
36. The sponsor said that they plan to have two children together and to move to a unit. He said that the applicant would not return to study again as it would be too difficult.

#### ***EVIDENCE OF THE UNCLE***

37. The applicant's uncle gave evidence that he believed the relationship was genuine.

#### ***FURTHER EVIDENCE OF THE APPLICANT***

38. The tribunal referred to the process under s.359AA of the Act. The tribunal explained that it would be putting information to the applicant which would be the reason, or a part of the reason, for affirming the decision under review. It would explain why this information was relevant and then invite the applicant to comment on or respond to the information. If she needed more time, she could request an adjournment.
39. The tribunal referred to the movement records of the applicant which show that he had travelled overseas from 26 July 2012 and did not return until 31 August 2012. This indicated that the applicant could not have met up with the sponsor as she had claimed she had and called into question the credibility of the claim she has made in relation to the application.
40. The applicant said that she could not remember if she saw the sponsor in August or September but they were communicating by text message and also telephone.
41. The tribunal referred to the sponsor's evidence that the applicant had stopped studying in April or May 2015 which was inconsistent to the information provided by the applicant which was that she had ceased study in February 2015. This indicated that the sponsor was unaware of significant events in the life of the applicant and called into question the degree of companionship or emotional support the parties provided to each other or whether they were in a genuine and continuing relationship.
42. The applicant said the sponsor knew that she stopped studying in February 2015 and that he was nervous and just forgot.
43. The tribunal referred to the sponsor's evidence that the applicant had never looked for work in Canberra. This again called into question the level of companionship and emotional support the parties provided to each other and whether the parties were aware of significant events in their lives or plans. This called into question whether the parties were in a genuine and continuing relationship.
44. The applicant said the sponsor had just made a mistake.

45. The tribunal referred to the sponsor's evidence that the applicant goes to the Buddhist Temple regularly and that he had accompanied her last week to the Buddhist Temple. This was inconsistent to the information provided by the applicant which was that she did not really have a religion and did not attend the Temple.
46. The applicant said that she was nervous and it may have been a mistake. She called into question what she had said about her worshipping at the Buddhist Temple.
47. The tribunal referred to the evidence of the sponsor that he and the applicant attended his church in Easter 2016 and Christmas 2015. This called into question the credibility of the information being provided by the parties and whether they were aware of significant issues in their respective lives or that they provided any degree of companionship or emotional support for each other. This called into question whether they were in a genuine and continuing relationship.
48. The applicant said that she was invited to go to church but did not go inside. She said that she was nervous and just forgot about this.
49. The tribunal referred to the evidence of the sponsor that he visits his parents every one or two weeks. This was inconsistent to the information provided by the applicant which was that he did not have any regular contact with his parents. This called into question the credibility of the information being provided by the parties and whether they were aware of significant activities and relationships within their lives and whether they were in a genuine and continuing relationship.
50. The applicant said that she did say that the sponsor keeps in touch with his parents.
51. The tribunal referred to the evidence of the sponsor that he speaks to the applicant's parents every one or two weeks. This was inconsistent with the information provided by the sponsor which was that the applicant speaks to her parents only every one or two months.
52. The sponsor said that what is being said is not exact and sometimes he does speak to them, but it varies.
53. The parties were provided further time to provide further information, including the bank statements of the parties and also any further response to the issues raised by the tribunal.
54. The applicant's agent provided a statement where it was submitted as follows:
  - The applicant knew of the sponsor's trip to Vietnam in 2012, but could not remember it but remembers seeing him after he returned to Australia;
  - The sponsor forgot the exact date when the applicant stopped studying in Canberra and was not aware of the reasons why the applicant didn't move immediately to Sydney;
  - The applicant wanted to find a job in Canberra to be able to convince the sponsor to relocate to Canberra because that was where the majority of her friends were, but as she was not able to secure any full-time job in Canberra she relocated to Sydney in May 2016;
  - The applicant forgot about going to the Temple with the sponsor the weekend before the hearing, because it was just a brief five minutes to say hello to the monks/nuns and she did not consider this trip to be a trip to the Temple which would normally last 30 minutes;

- The discrepancy in whether the applicant attended any church ceremonies with the sponsor was because the applicant never goes into the church and just waits outside; and
- The discrepancy in how often the sponsor would talk to the applicant's parents (being once a week whereas the applicant said that he would only speak to them once every two or three months) was because every time the applicant speaks to her parents which is once a week the sponsor would say hello in the background.

55. For the following reasons, the tribunal has concluded that the decision under review should be affirmed.

### **CONSIDERATION OF CLAIMS AND EVIDENCE**

56. The issue in the present case is whether the applicant is the spouse, as defined in s.5F of the Act, of the sponsoring partner.

### **WHETHER THE PARTIES ARE IN A SPOUSE OR DE FACTO RELATIONSHIP**

57. Clauses 820.211(2)(a) and 820.221 require that at the time the visa application was made, and at the time of this decision, the applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case the applicant claims to be the spouse of the sponsor who is an Australian citizen.

58. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as husband and wife to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)-(d). In forming an opinion as to these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the parties' household and their commitment to each other as set out in r.1.15A(3), which is extracted in the attachment to this decision.

### **ARE THE PARTIES VALIDLY MARRIED?**

59. If the parties are validly married, they may meet the requirements of a spousal relationship, but not a de facto relationship. The parties were married on 26 October 2013. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

### **ARE THE OTHER REQUIREMENTS FOR A SPOUSAL RELATIONSHIP MET?**

#### **FINANCIAL ASPECTS**

60. The applicant has provided various documents to support a claim that the financial aspects of the relationship indicate a genuine relationship. This includes the parties taking out travel insurance in their joint names and opening a joint bank account. The parties claimed that they lived together and meet their day-to-day household expenses including the payment of their rent.

61. Both parties have accounts in their sole name as well as having the joint bank account. Both parties pay is deposited into the bank accounts in their sole names. The information provided as to the applicant's personal bank account indicates it had an opening balance as



at 14 December 2015 of \$0.00. Details of the account before this date were not provided. The applicant's pay is deposited into this account. From February 2016 the applicant would transfer her pay from this account into the joint bank account. The address the statements for the joint bank account were sent to prior to the applicant moving to Sydney was the address of the sponsor in Canberra.

62. The sponsor's personal bank account shows that his pay is deposited automatically into this account. He is not paid in cash as was claimed by the applicant. There is no information which would indicate that the sponsor transferred any of his income or savings from his current employer into the joint bank account. It is noted that the sponsor makes cash withdrawals from a number of different hotels including the Twin Willows Hotel, the Stardust Hotel, Oscars Sports Hotel and Yagoona Tavern. There is nothing to indicate that the sponsor was using his income or savings to pool with the financial resources of the applicant or that they were sharing any expenses. Prior to the applicant making regular payments into the joint bank account, the joint bank account had a minimal balance, and often was in debit. The joint bank account does not appear to be used by the sponsor and appears to be used by the applicant alone using her own income which she deposits into that account.
63. The tribunal finds that the banking arrangements of the parties do not indicate they are pooling their financial resources or sharing their day-to-day household expenses.
64. In statements provided by the applicant she stated that she was financially supported for her studies in Canberra by her family. In the submissions by the applicant's agent dated 30 July 2016 it was claimed that one of the reasons she ceased studying in Canberra was because "her family was no longer able to financially support studies as they were facing financial difficulties of their own". Despite the sponsor claiming in his statement dated 12 January 2015 that he assists the applicant pay her school fees and her daily living expenses, there is nothing to indicate that the applicant received any financial support from the sponsor and is in contradiction to the statement by the applicant which was that she was supported by her family and also the submissions by the applicant's agent.
65. Overall, the tribunal finds that there is little information which would indicate the financial aspects of the relationship support a finding that the parties are in a genuine and continuing relationship.

#### ***NATURE OF THE HOUSEHOLD***

66. At the time of the application the applicant was living in Canberra and the sponsor was living in Sydney. The applicant was a student in Canberra and claimed that despite trying to transfer her study to Sydney was unable to do so and so was not able to live with the sponsor. There is no information which would indicate the applicant at any time made any attempt to transfer her studies to Sydney.
67. The applicant, despite living in Sydney, was working as a nail technician in Wollongong. He then obtained employment as a nail technician in Penrith. There is no information that the applicant made any attempt to obtain deployment in Canberra despite his having to change employer whilst he was living in Sydney and having to travel to Wollongong for his employment for a significant period after the parties were married.
68. The parties claimed that they have been living together in a granny flat occupied by the sponsor since May 2015. Various documents have been provided addressed to the parties individually and jointly to this address.
69. During the hearing before the tribunal, inconsistent information was provided by the parties as to various aspects of their lives together. This included when the sponsor attended his

church, the visits the sponsor makes to his parents and siblings and other activities of the parties. That the parties gave inconsistent information as to activities of each other raises a question whether they do live together as they are not aware of their daily activities.

70. The tribunal finds there is some information which would indicate the applicant has been living in the residence of the sponsor since May 2015. There is, however, limited credible information which would indicate the parties living arrangements are indicative of a genuine and continuing relationship. It is noted that the applicant only claimed to move to live with the sponsor in May 2015, more than three months after she ceased any study in Canberra which was the reason why it was claimed she was not able to live with the sponsor in Sydney.

### ***SOCIAL ASPECTS OF THE RELATIONSHIP***

71. The applicant has provided statements from her relatives in Australia claiming they believe the relationship between the applicant and the sponsor is genuine. The applicant's uncle gave evidence in support of the application to the tribunal. Only limited weight is given to the statements in support of the application as the applicant's friends and relatives have an incentive to be able to support the applicant's claim to be able to live in Australia.
72. The relationship between the applicant and the sponsor is not recognised by the family of the applicant, all of whom live in Australia. This was explained by the parties by claiming that the sponsor's family do not like newly arrived Vietnamese people. It was claimed that the sponsor's family did not like the applicant's first wife who was also Vietnamese and he sponsored for a Partner visa and then separated from after she was granted permanent residence. The applicant said that she had never met the family of the sponsor. The sponsor stated that he regular visits his parents and siblings.
73. The fact that the sponsor's family have not provided any information which would indicate they recognise the relationship between the sponsor and the applicant is genuine or are even aware of that relationship must be given some weight when considering whether the parties represent themselves as being married to each other and whether the relationship is genuine.
74. The applicant said the only social activity she and the sponsor participate in is visiting her uncle and other relatives. There is no information that the parties represent themselves as being married to each other or that their relationship is recognised in any wider circle than the immediate family and friends of the sponsor as being genuine.
75. The sponsor's bank records indicate that he regularly has withdrawn money from various hotels. This would indicate that the sponsor visits those hotels for recreation or other activities. The applicant was unaware of the sponsor frequenting these venues. This would indicate the parties do not regularly participate in social activities together.
76. The parties provided inconsistent information as to whether they attended the sponsor's Church together or attended a Buddhist Temple together. This is discussed further below. The tribunal finds that the parties did not participate in any religious activities together. No information has been provided by members of the sponsor's Church would indicate that he has indicated to them that he is married to the applicant.
77. Overall, there is very little information which would indicate that the parties represent themselves to other people as being in a married relationship or that other people, other than the applicant's family and immediate friends, recognise the relationship is genuine. There is little information which would indicate the parties undertake joint social activities or that the friends and relatives of the sponsor recognise his claimed relationship with the applicant. The tribunal finds the social aspects of the relationship do not indicate that the relationship is

genuine and continuing or that the parties have a mutual commitment to a shared life to the exclusion of others.

### ***NATURE OF THE COMMITMENT TO EACH OTHER***

78. The parties claim to have first met each other in July 2012 soon after the applicant arrived in Australia on a Student visa. She was living in Canberra and he was living in Sydney. It was claimed the sponsor expressed his love of the applicant in September 2012. Despite the fact that the sponsor travelled to Vietnam on 26 July 2012 and did not return until 31 August 2012. As the parties were living in different cities, the fact that the sponsor would have declared his love to the applicant after having spent such a short period of time with her seems unlikely.
79. The parties were married on 26 October 2013. Relatives and friends of the applicant attended, however, there does not appear to have been any relatives or friends of the sponsor attending the wedding. The parties have now been married for almost 3 years.
80. For the majority of the time of the parties have known each other and claimed to have been in a relationship with each other the applicant has been living in Sydney and the sponsor has been living in Canberra. In her statement when the application was filed, the applicant claimed that she wanted to live with her husband as soon as possible and had been trying to look for a university in Sydney to study. There is no information which would indicate that the applicant made any attempt to try to transfer her studies to Sydney or that the sponsor made any attempts to be able to obtain work in Canberra so that he could live with the applicant in Canberra. It was only in May 2015 that the applicant moved to Sydney and claimed to start living with the sponsor.
81. There is limited information which would indicate the parties spent any significant time together over the period that the applicant was living in Canberra and the sponsor in Sydney. The tribunal accepts that the applicant did travel to Sydney on occasions and there are photos of the parties together at the bus stop. The applicant had other reasons to travel to Sydney, such as visiting her uncle who she has a close relationship with and visited prior to any commitment to a relationship with the sponsor, and there is limited information which would indicate the parties spent any time together when the parties were living in separate cities. The applicant claimed that she did not travel to Sydney over Christmas 2014 because the sponsor was working over that period. This is implausible.
82. The tribunal does not accept that the parties made any attempt to either change education provider or obtain employment to enable themselves to be able to live together until May 2015. The sponsor obtained employment as a nail technician in Wollongong and in Penrith, both which require lengthy travel from his home address. There is no information which would indicate that the sponsor made any attempt to be able to find employment in Canberra to be able to live with the applicant. This indicates a lack of commitment to the relationship by the sponsor.
83. As indicated above, there is no information which would indicate that the applicant took any steps to try to transfer her studies to an education provider in Sydney. The applicant said that she ceased any study in February 2015. She could not continue her studies because her family could no longer afford to meet the financial cost and she had failed her exams. The applicant initially said that she did not move in immediately to live with the sponsor in Sydney as he had travelled overseas. The sponsor returned from Vietnam in March 2015, two months before the applicant moved to Sydney. The applicant then claimed that she was looking for work in Canberra which she hoped would be better than the employment the sponsor had in Sydney. There is no evidence of any attempt to obtain employment by the applicant in Canberra. She claimed she needed time to prepare to move from Canberra to

Sydney. The applicant said that apart from her clothes, she had nothing else in Canberra to move. The tribunal does not accept that relocating from Canberra to Sydney would take the time that it did for the applicant if the only delays were arranging to move her clothes.

84. The sponsor was unaware of when the applicant stopped studying. He believed that it was in April or May 2015. He was unaware of any reason for delay from the sponsor in moving from Canberra to Sydney. He stated that the applicant had never worked in Canberra and never sought to find work in Canberra.
85. The tribunal does not accept that there was any valid reason why the parties decided to live in separate cities for the majority of their relationship. The fact that the parties remained living in separate cities for the majority of the relationship calls into question the degree of companionship or emotional support that they provide to each other or their commitment to their relationship. The fact that the applicant remained living in Canberra despite not being enrolled in any course of study and not working or having any other reason to remain in Canberra while the applicant was living in Sydney again calls into question the commitment the parties have to any claimed relationship with each other.
86. The fact that the sponsor was unaware of when the applicant finished her studies or, as she claimed, she was looking for work in Canberra indicates the parties do not communicate with each other or provide any companionship and emotional support. It indicates the parties had not discussed important aspects of their lives together, including whether they should be living in Canberra, as the applicant claimed she wanted to do, or Sydney. As the sponsor had remained living in Sydney, despite changing his employer from one in Wollongong to one in Penrith, while the applicant was living in Canberra again indicates a lack of commitment to the relationship and the lack of any communication or long-term planning for their life together.
87. As indicated above, the parties provided inconsistent information as to their respective religious activities. The applicant said the sponsor is a Catholic. The sponsor said that he is a Baptist. The applicant said the sponsor does not go to church and, when specifically asked by the tribunal, said the applicant did not attend church on Christmas 2015 or Easter 2016 when they were claiming to be living together. The sponsor said that he tries to go to church on Sundays when he is not working and that both he and the applicant attended church together on Christmas 2015 and Easter 2016. The applicant explained this last inconsistency by claiming that she did not actually go into the church and was nervous and forgot about her attending. The tribunal does not accept that the applicant would have stated in response to a specific question if the sponsor attended his Church on Easter 2016 or Christmas 2015 that he did not go and then say she forgot he went as she went with him but did not physically into the Church herself. The tribunal finds the parties have provided false information to the tribunal and the applicant is not aware of or involved with the sponsor's activities with his church.
88. Although the tribunal accepts the various Christian denominations may appear confusing for many non-Christians, the tribunal does not accept that if the parties were in a genuine relationship that the parties would not have discussed to some extent their personal religious beliefs so that the applicant would have had some understanding of the church the sponsor was attending. The fact that the applicant is unaware of the religious beliefs of the sponsor and the manner in which he practices his religion indicates a lack of companionship and emotional support between the parties and supports a finding the parties are not in a genuine relationship.
89. The tribunal finds that there is little credible information which would indicate the parties have displayed the degree of commitment or companionship and emotional support for each other which would be expected in a genuine and continuing relationship. For most of the

relationship, the parties have lived separately and apart with no plausible reason why they would continue to do so based on their study and work responsibilities. Even after the applicant finished her studies in Canberra she delayed moving to live with the sponsor with no apparent discussion with or knowledge by the sponsor of why there was any delay from the cessation of her studies to her moving to Sydney.

### **OVERALL ASSESSMENT**

90. As indicated above, the parties provided inconsistent information to the tribunal hearing on various aspects of the relationship together.
91. The parties provided inconsistent information as to how often the sponsor talks to the applicant's parents. The applicant claimed that she spoke to her parents every one or two weeks, usually when the sponsor was at work, and the sponsor would only speak to them every one or two months. The sponsor claimed that he spoke to the applicant's parents every one or two weeks. The applicant explained this inconsistency by claiming that when she speaks to her parents the sponsor would say hello in the background and this was what he was referring to when he said that he spoke to her parents. This does not explain, however, how he could be doing this when the applicant stated she only calls them every one or two weeks and usually when the applicant was at work.
92. This inconsistency, and the other inconsistencies noted above, calls into question the credibility of all the information provided by both the applicant and the sponsor.
93. The tribunal has considered the evidence of the relationship both individually and cumulatively. The applicant has provided some information which indicates the parties are in a relationship. Against this, however, there is significant information which would indicate the parties do not have a mutual commitment to an exclusive relationship with each other, that the relationship is not genuine and continuing and that they do not consider the relationship as long-term. As set out above, the parties have lived for the majority of their relationship in separate cities and, despite the claims of the parties that they wished to live together, there does not appear to have been any attempt by the parties to organise their affairs so that they would be able to live together. Even when the applicant ceased her studies in February 2015 she delayed moving to Sydney and the reasons for this delay were not known to the sponsor. The parties are unaware of significant aspects of each other's lives, including their religious practices, and the sponsor's family do not appear to recognise or support the relationship. When considering these and the other matters set out above as a whole, the tribunal finds the parties do not have a mutual commitment to a shared life to the exclusion of all others and that they are not in a genuine and continuing relationship. The tribunal finds that although the parties now may share the same house they are not living together in a genuine relationship.
94. Given these findings the tribunal is not satisfied that at the time the visa application was made and at the time of this decision the parties were in a spousal relationship.
95. Therefore the applicant does not meet cl.820.211(2)(a) and cl.820.221. For the reasons above, the applicant does not satisfy the criteria for the grant of the visa.

### **DECISION**

96. The tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa.

Hugh Sanderson  
Member

## **ATTACHMENT - EXTRACT FROM MIGRATION REGULATIONS 1994**

### **1.15A SPOUSE**

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
  - (a) a Partner (Migrant) (Class BC) visa; or
  - (b) a Partner (Provisional) (Class UF) visa; or
  - (c) a Partner (Residence) (Class BS) visa; or
  - (d) a Partner (Temporary) (Class UK) visa;

the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).

- (3) The matters for subregulation (2) are:
  - (a) the financial aspects of the relationship, including:
    - (i) any joint ownership of real estate or other major assets; and
    - (ii) any joint liabilities; and
    - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
    - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
    - (v) the basis of any sharing of day to day household expenses; and
  - (b) the nature of the household, including:
    - (i) any joint responsibility for the care and support of children; and
    - (ii) the living arrangements of the persons; and
    - (iii) any sharing of the responsibility for housework; and
  - (c) the social aspects of the relationship, including:
    - (i) whether the persons represent themselves to other people as being married to each other; and
    - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
    - (iii) any basis on which the persons plan and undertake joint social activities; and
  - (d) the nature of the persons' commitment to each other, including:
    - (i) the duration of the relationship; and
    - (ii) the length of time during which the persons have lived together; and
    - (iii) the degree of companionship and emotional support that the persons draw from each other; and
    - (iv) whether the persons see the relationship as a long term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).